#16
8/23/03
T. AF/3683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

GARY P. COTE

Serial No.: 09/899,029 **Art Unit: 3683**

Filed: July 6, 2001 **Examiner: R. Siconolfi**

For: WHEELBARROW BRAKING SYSTEM

REPLY BRIEF

To the Commissioner of Patents and Trademarks

Sir:

In reply to the Examiner's Answer of July 10, 2003, kindly consider the following, which addresses the numbered paragraphs in the Examiner's Answer with corresponding numbers as below:

(1) The statement about Real Party in Interest is in error. Applicant has provided correct information in the Appeal Brief (see page 1).

(2) The statement that the Appeal Brief does not contain information about related appeals and interferences is in error. Attention is kindly drawn to the Appeal Brief, page 1, middle and center of that page, which provides the required information.

(7) The Examiner does not agree with Applicant's arguments for patentability of each claim separately under this heading. It, therefore, appears the Examiner concedes

that Applicant has stated that the appealed claims do not stand or fall together, and that Applicant has argued for the patentability of each claim separately.

(10) The Examiner has withdrawn the 35 U.S.C. 112 second paragraph rejection of claims 25 and 26.

Thus, the only remaining issues, based on the final office action, are:

Whether claims 31-34 are patentable under 35 U.S.C. 102 over Krauer (U.S. Patent 4,966,047)?

Whether claims 3-15, 25, 26, 46, and 47, as well as, claim 28 are patentable under 35 U.S.C. 103 over Miyazaki (U.S. Patent 6,173,799) in view of Krauer (U.S. Patent 4,966,047)?

Whether claims 35 and 36 are patentable under 35 U.S.C. 103 over Krauer (U.S. Patent 4,966,047)?

Whether claims 39, 40, 41, 42, as well as, claims 43, 44 and 45 are patentable under 35 U.S.C. 103 over Krauer (U.S. Patent 4,966,047) in view of Miyazaki (U.S. Patent 6,173,799)?

(11) On page 6, the Examiner refers to Patterson (U.S. Patent 3,950,005) (see line 2) and Burbank (U.S. Patent 5,690,191) (see line 11). However, neither of these references have been hitherto positively cited against the claims in the express rejection of the claims. Thus, those references cannot be relied on by the Examiner.

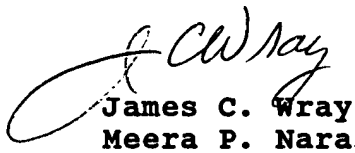
Because the references are not positively included in the examiner's statement of rejection, the references should not be

considered. "Where a reference is relied on to support a rejection, whether or not in a 'minor capacity,' there would appear to be no excuse for not positively including the reference in the statement of rejection." In re Hoch, 166 USPQ 406, 407 n.3 (CCPA 1970).

(11) The Examiner dismisses Applicant's arguments against taking "Official Notice" as being untimely (without any substantiating evidence for the claim rejections as mandated by the Federal Circuit). However, those arguments were presented to the Board of Appeals in the Appeal Brief and, therefore, are timely.

For the above reasons and for the reasons stated in the Appeal Brief, reversal of the Examiner and allowance of all the claims are respectfully requested.

Respectfully,



James C. Wray, Reg. No. 22,693
Meera P. Narasimhan, Reg.No. 40,252
1493 Chain Bridge Road, Suite 300
McLean, Virginia 22101
Tel: (703) 442-4800
Fax: (703) 448-7397

August 11, 2003